

HERBERT W. SIMMS

IBLA 71-49

Decided August 4, 1972

Appeal from decision of Anchorage, Alaska, state office, Bureau of Land Management, which rejected homesite purchase application (A-062214).

Set aside and remanded.

Equitable Adjudication: Generally

Where a claimant under public land laws involving requirements of settlement or improvement of the claim alleges substantial compliance with the law within a statutorily required period, but has failed to submit required proofs of compliance within that time, relief may be afforded under 43 U.S.C. §§ 1161-1164 (1970), and the implementing regulation, 43 CFR Part 1870 (1972), to permit equitable adjudication of late proofs on their merits.

Alaska: Homesites -- Applications and Entries: Generally -- Equitable Adjudication -- Withdrawals and Reservations: Generally

Equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required, where substantial compliance with the law has been alleged, and the claim was initiated before the land was withdrawn by Public Land Order No. 4582.

APPEARANCES: Herbert W. Simms, pro se.

OPINION BY MRS. THOMPSON

Herbert W. Simms appealed from a decision of the Anchorage, Alaska, state office, Bureau of Land Management, dated August 12, 1970, which rejected his application to purchase a homesite, because it was not filed within five years after the filing of the

notice of location of settlement as required by 43 U.S.C. § 687a-1 (1970) and 43 CFR § 2563.1-1(c).

The state office also held that when the statutory life of the notice expired because of the failure to file a purchase application within the required time, Public Land Order No. 4582, 34 F.R. 1025 (January 23, 1969), intervened to reserve the land from further settlement or application. It rejected the application to purchase because the withdrawal was in effect when the application was submitted.

Appellant filed notice of location of settlement on March 3, 1965. However, he did not file his application to purchase until June 10, 1970, 99 days after the application was due. He contends on appeal that he was unable to secure the necessary application forms because he was employed between February 15, 1970, and May 31, 1970, on the north slope of Prudhoe Bay. He alleges that: (1) he has resided in his home since December 5, 1966; (2) he has invested \$12,000 exclusive of his labor in the homesite; (3) the approximate value of his home is \$20,000; (4) he has complied with the applicable rules and regulations; and (5) he did not receive a courtesy notice before the application was due.

Homesites in Alaska may be purchased under the Act of May 26, 1934, 48 Stat. 809, as amended, 43 U.S.C. § 687a (1970) (formerly set forth at 48 U.S.C. § 461 (1958)), which provides:

That any citizen of the United States, after occupying land of the character described as a homestead or headquarters, in a habitable house, not less than five months each year for three years, may purchase such tract * * * without any showing as to his employment or business. * * *

Section 5 of the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970) (formerly set forth at 48 U.S.C. § 461a (1958)), requires claimants to file a notice of occupancy within ninety days from the initiation of the claim in order to be given credit for the occupancy maintained in the claim prior to the filing of the notice or an application to purchase, whichever is earlier. It then provides:

Application to purchase claims, along with the required proof or showing must be filed within five years after the filing of the notice of claim * * *.

Appellant has alleged that he has complied with the law but was unable to file a timely purchase application. This raises the issue of whether equitable adjudication may be invoked.

We noted in Elizabeth Hickethier, 6 IBLA 306, 308 (1972), that:

[w]here a claimant under other public land laws involving requirements of settlement or improvement of the claims alleges substantial compliance with the law within a statutory required period, but has failed to submit the required proofs of compliance within that time, equitable relief may be afforded under the authority of 43 U.S.C. 1161-1164 (1970), and the implementing regulation, 43 CFR Part 1870 (1972).

Equitable relief has been granted and such cases have been remanded to the Bureau of Land Management for consideration on their merits, where appellants have alleged substantial compliance with the law within the time required. See, e.g., Warrine F. Harden, 5 IBLA 194 (1972); Juanita J. Anderson, 4 IBLA 170 (1971); and Ruth Gary, A-30329 (August 6, 1965).

Also, in cases where the parties did not file purchase applications for trade and manufacturing sites within the five year period required by section 5 of the Act of April 29, 1950, supra, but had alleged substantial compliance with the law, this Board held the applications could be considered under the equitable adjudication authority despite the withdrawal by Public Land Order No. 4582 after the claims were initiated. Elizabeth Hickethier, supra; C. Rick Houston, 5 IBLA 71 (1972). The cases were remanded to the Bureau of Land Management for consideration on their merits. Likewise, equitable adjudication may be invoked to permit consideration of a homesite purchase application which was not filed within the time required, where substantial compliance with the law has been alleged.

Since appellant's claim was initiated prior to the original withdrawal by Public Land Order No. 4582, supra, as amended by Public Land Order No. 4962, 35 F.R. 18874 (December 11, 1970), both of which were terminated by the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688), those orders do not bar consideration of the purchase application on its merits. Cf. C. Rick Houston, supra; Elizabeth Hickethier, supra. See also, Juanita J. Anderson, supra.

Because of the foregoing reasons, we conclude that the Bureau should consider appellant's application to purchase under the equitable adjudication provision of the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is set aside and the case is remanded to the Bureau of Land Management for appropriate action in accordance with this decision.

Joan B. Thompson
Member

We concur:

Newton Frishberg
Chairman

Anne Poindexter Lewis
Member

